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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission
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AZ CORP COMMISSION
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In the matter of:

Shadow Beverages and Snacks, LLC, an
Arizona limited liability company,

Lucio George Martinez and Lisa K. Martinez,
husband and wife,

Samuel A. Jones, a married man,

Respondents.

DOCKET NO. S-20948A-15-0422

**RESPONDENT SAMUEL A. JONES'
ANSWER TO NOTICE OF
OPPORUTNITY FOR HEARING
REGARDING PROPOSED ORDER TO
CEASE AND DESIST, ORDER FOR
RESTITUTION, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
ORDER FOR OTHER AFFIRMATIVE
ACTION**

Respondent Samuel A. Jones ("Respondent" or "Mr. Jones") submits his Answer to the Notice of Opportunity for Hearing Regarding Proposed Order to Cease and Desist, Order for Restitution, Order for Administrative Penalties and for Other Affirmative Action ("Notice"). Respondent responds to the numbered paragraphs of the Notice as follows:

**I.
JURISDICTION**

1. Respondent admits the allegations in paragraph 1 of the Notice.

**II.
RESPONDENTS**

2. Respondent admits the allegations in the first sentence of paragraph 2 of the Notice.

Respondent is without sufficient knowledge to answer the allegations in the remaining sentences of paragraph 2 of the Notice and therefore denies the same.

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13. Respondent is without sufficient knowledge to answer the allegations in paragraph 13 of the Notice and therefore denies the same.

14. Respondent is without sufficient knowledge to answer the allegations in paragraph 14 of the Notice and therefore denies the same.

15. Respondent is without sufficient knowledge to answer the allegations in paragraph 15 of the Notice and therefore denies the same.

16. Respondent is without sufficient knowledge to answer the allegations in paragraph 16 of the Notice and therefore denies the same.

17. Respondent is without sufficient knowledge to answer the allegations in paragraph 17 of the Notice and therefore denies the same.

18. Respondent is without sufficient knowledge to answer the allegations in paragraph 18 of the Notice and therefore denies the same.

19. Respondent admits the first sentence of allegations in paragraph 19. Respondent is without knowledge to answer the allegations in the second sentence of paragraph 19 of the Notice and therefore denies the same.

20. Respondent is without sufficient knowledge to answer the allegations in paragraph 20 of the Notice and therefore denies the same.

21. Respondent denies the allegations sentence two in paragraph 21 of the Notice and the allegation of a failure on his part to perform on any personal guarantees. As to the remaining allegations in paragraph 21, Respondent is without sufficient knowledge to answer the allegations and therefore denies the same.

22. Respondent is without sufficient knowledge to answer the allegations in paragraph 22 of the Notice and therefore denies the same.

1 23. Respondent is without sufficient knowledge to answer the allegations in paragraph
2 23 of the Notice and therefore denies the same.

3 24. Respondent is without sufficient knowledge to answer the allegations in paragraph
4 24 of the Notice and therefore denies the same.

5 25. Respondent is without sufficient knowledge to answer the allegations in paragraph
6 25 of the Notice and therefore denies the same.

7 26. Respondent is without sufficient knowledge to answer the allegations in paragraph
8 26 of the Notice and therefore denies the same.

9 27. Respondent is without sufficient knowledge to answer the allegations in paragraph
10 27 of the Notice and therefore denies the same.

11 28. Respondent is without sufficient knowledge to answer the allegations in paragraph
12 28 of the Notice and therefore denies the same.

13 29. Respondent denies the allegations in paragraph 29 of the Notice of signing any
14 promissory note. As to the remaining allegations in paragraph 29 of the Notice, Respondent is
15 without sufficient knowledge to answer the allegations and therefore denies the same.
16

17 30. Respondent is without sufficient knowledge to answer the allegations in paragraph
18 28 of the Notice and therefore denies the same.
19

20 31. Respondent is without sufficient knowledge to answer the allegations in paragraph
21 31 of the Notice and therefore denies the same.

22 32. Respondent is without sufficient knowledge to answer the allegations in paragraph
23 32 of the Notice and therefore denies the same.
24

25 33. Respondent is without sufficient knowledge to answer the allegations in paragraph
26 33 of the Notice and therefore denies the same.
27

1 34. Respondent is without sufficient knowledge to answer the allegations in paragraph
2 34 of the Notice and therefore denies the same.

3 35. Respondent is without sufficient knowledge to answer the allegations in paragraph
4 35 of the Notice and therefore denies the same.

5 36. Respondent is without sufficient knowledge to answer the allegations in paragraph
6 36 of the Notice and therefore denies the same.

7
8 **IV.**
9 **VIOLATION OF A.R.S. § 44-1841**
 (Offer or Sale of Unregistered Securities)

10 37. Respondent is without information to answer paragraph 37 and therefore denies the
11 same.

12 38. Respondent denies the allegations in paragraph 38.

13 39. Respondent denies the allegations in paragraph 39.

14 40. Respondent denies the allegations in paragraph 40.

15
16 **V.**
17 **VIOLATION OF A.R.S. § 44-1842**
 (Transactions by Unregistered Dealers or Salesmen)

18 41. Respondent denies the allegations in paragraph 41.

19 42. Respondent denies the allegations in paragraph 42.

20 **VI.**
21 **VIOLATION OF A.R.S. § 44-1991**
 (Fraud in Connection with the Offer or Sale of Securities)

22 43. Respondent denies the allegations in paragraph 43 and all subparts to paragraph 43.

23 44. Respondent denies the allegations in paragraph 44.

24 45. Respondent denies the allegations in paragraph 45.

25 46. Respondent denies every allegation not specifically admitted herein.
26
27

AFFIRMATIVE DEFENSES

The following affirmative defenses nullify any potential claims asserted by the Division. Respondent reserves the right to amend this Answer to assert additional defenses after completion of discovery.

First Affirmative Defense

The ACC cannot meet the applicable standards for any of the relief it is seeking in the Notice.

Second Affirmative Defense

The Notice fails to state a claim upon which relief can be granted.

Third Affirmative Defense

Respondent did not engage in any activity that required registration with the Arizona Corporation Commission's Securities Division.

Fourth Affirmative Defense

If the program at issue is determined to be a security, it was exempt from registration and/or sold in an exempt transaction.

Fifth Affirmative Defense

The alleged investors suffered no injuries or damages as a result of Respondent's alleged acts.

Sixth Affirmative Defense

The alleged investors alleged injuries or damages are the result of acts or omissions committed by non-parties.

Seventh Affirmative Defense

Neither Restitution, nor an administrative penalty are appropriate remedies.

Eight Affirmative Defense

To the extent an award of restitution is ordered, the ACC should use its discretion to reduce the amount, if any, Respondent must pay.

Ninth Affirmative Defense

Respondent did not violate A.R.S. §§ 44-1841 or 44-1842.

Tenth Affirmative Defense

Respondent did not act within the requisite scienter.

Eleventh Affirmative Defense

The Division has failed to plead fraud with reasonable particularity as required by Rule 9(b) of the Arizona Rules of Civil Procedure.

Twelfth Affirmative Defense

Respondent did not employ a device, scheme or artifice to defraud the alleged investors.

Thirteenth Affirmative Defense

Respondent did not make or intentionally make any untrue statements of material fact that were misleading.

Fourteenth Affirmative Defense

The alleged investors could not have reasonably relied upon any statement or action by Respondent.

Fifteenth Affirmative Defense

Respondent did not engage in any transaction, practice or concourse of business that operated or would operate as a fraud or deceit upon the alleged investors.

Sixteenth Affirmative Defense

The ACC's claims are barred as either vague, ambiguous, overbroad, or a combination of the three.

Seventeenth Affirmative Defense

The ACC's claims are barred as a violation of due process.

Eighteenth Affirmative Defense

Any damages are due to the fault of others; including Respondent Martinez's acts that were not known or authorized.

Nineteenth Affirmative Defense

If the Shadow notes are determined to be securities, Respondent did not offer or sell them within the meaning of the Securities Act of Arizona.

Twentieth Affirmative Defense

Respondent made neither material omissions nor material misrepresentations, nor did he otherwise violate A.R.S. § 44-1991.

Twenty-first Affirmative Defense

Respondent was not a controlling person of Shadow Beverages and Snacks within the meaning of A.R.S. § 44-1999.

Twenty-second Affirmative Defense

1 Even if deemed a controlling person within the meaning of A.R.S. § 44-1999, Respondent
2 had no knowledge of or reasonable grounds to believe in the existence of the facts by reason of
3 which his liability is alleged to exist.

4 Twenty-third Affirmative Defense

5 Respondent did not directly or indirectly control any person who may be liable for any
6 alleged violation of the Securities Act.

7 Twenty-fourth Affirmative Defense

8 If Mr. Jones is deemed a controlling person of Shadow Beverages and Snacks he is not liable
9 for any alleged securities fraud because he acted in good faith and did not directly or indirectly
10 induce any alleged violation of the Securities Act.

11 Twenty-fifth Affirmative Defense

12 If Mr. Jones is deemed a controlling person of Shadow Beverages and Snacks, any fault or
13 alleged damages or restitution must be apportioned to other numerous, unnamed persons who too
14 would fit the Division's theory of a controlling person of Shadow Beverages and Snacks.

15 Twenty-sixth Affirmative Defense

16 Respondent alleges such other affirmative defenses set forth in the Arizona Rules of Civil
17 Procedure 8(c) or elsewhere as may be determined to be applicable during discovery.

18 RESPECTFULLY SUBMITTED this 4th day of February, 2016.

19 BASKIN RICHARDS PLC

20 By David Wood
21 Alan S. Baskin
22 David E. Wood
23 2901 North Central Avenue, Suite 1150
24 Phoenix, AZ 85012
25 Attorney for Respondent Samuel A. Jones
26
27

1 ORIGINAL and thirteen copies of the foregoing
2 filed this 4th day of February, 2016, with:

3 Docket Control
4 Arizona Corporation Commission
5 1200 West Washington Street
6 Phoenix, AZ 85007

7 COPY of the foregoing hand-delivered
8 this 4th day of February, 2016, to:

9 Matthew J. Neubert
10 Director of Securities
11 Securities Division
12 Arizona Corporation Commission
13 1300 W. Washington Street, 3rd Floor
14 Phoenix, AZ 85007

15 Hearing Officer
16 Hearing Division
17 Arizona Corporation Commission
18 1200 W. Washington Street
19 Phoenix, AZ 85007

20 COPY of the foregoing mailed
21 this 4th day of February, 2016 to:

22 Paul Kitchin
23 Securities Division
24 Arizona Corporation Commission
25 1300 W. Washington, 3rd Floor
26 Phoenix, AZ 85007

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